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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

**UNITED STATES OF AMERICA, *ex rel.*
JOANNE CRETNEY-TSOSIE,**

Plaintiffs,

V.

CREEKSIDE HOSPICE II, LLC, et al.,

Defendants.

Case No.: 2:13-cv-167-HDM

UNITED STATES OF AMERICA, *ex rel.*
VENETA LEPERA,

Plaintiffs,

v.

SKILLED HEALTHCARE, LLC, et al.,

Defendants.

Case No.: 2:13-cv-1283-GMN-PAL

**UNITED STATES' AND STATE OF
NEVADA'S MOTION TO
CONSOLIDATE ACTIONS
AND ORDER**

UNITED STATES' AND STATE OF NEVADA'S MOTION TO CONSOLIDATE ACTIONS

The United States and the State of Nevada, pursuant to Fed. R. Civ. P. 42(a)(2), request the Court to consolidate the two actions captioned above and to assign the consolidated action to Judge Howard McKibben. In support of their motion, the United States and Nevada present their attached memorandum of points and authorities.

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Dated: August 7, 2014

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

2 UNITED STATES OF AMERICA, *ex rel.*
3 JOANNE CRETNEY-TSOSIE,

4 Plaintiffs,

5 v.

6 CREEKSIDER HOSPICE II, LLC, *et al.*,

7 Defendants.
8

9 UNITED STATES OF AMERICA, *ex rel.*
10 VENETA LEPERA,

11 Plaintiffs,

12 v.

13 SKILLED HEALTHCARE, LLC, *et al.*,

Defendants.
14

) Case No.: 2:13-cv-167-HDM

) Case No.: 2: 13-cv-1283-GMN-PAL

14
**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
15 UNITED STATES' AND STATE OF NEVADA'S MOTION TO CONSOLIDATE ACTIONS**

16 The United States and Nevada request the Court consolidate these two related actions in
17 order to achieve economy for the Court and the parties during the litigation of the issues of fact and
18 law which the two suits have in common.

19 **I. ARGUMENT**

20 **A. The Legal Standard**

21 Rule 42(a)(2) of the Federal Rules of Civil Procedure provides:

22 If actions before the court involve a common question of law or fact, the court may . . . (2)
23 consolidate the actions . . .

24 District courts have broad discretion to consolidate actions under this rule. *Arteris S.A.S v.*
25 *Sonics, Inc.*, 2013 WL 3052903 *7 (N.D.Cal. 2013); *United States ex rel. Martin v. Life Care*
26 *Centers of America, Inc.*, 912 F.Supp.2d 618, 622 (E.D. Tenn. 2012) (consolidating multiple health-
27 care fraud *qui tam* suits).
28

1 **B. The Cases Have Numerous Common Issues of Law and Fact**

2 Both of the actions we seek to consolidate are brought pursuant to the *qui tam* provisions of
 3 the False Claims Act, 31 U.S.C. §§ 3729 *et seq.* The first-filed of the two cases, No. 2:13-cv-167
 4 (the C-T Case), is also brought on behalf of Nevada under the Nevada False Claims Act, NRS §§
 5 357.010 *et seq.*

6 In the C-T Case , the relator's Amended Complaint, filed July 12, 2012, asserts that two
 7 defendants, Creekside Hospice II, LLC (Creekside) and Skilled Healthcare Group, Inc. (SKG),
 8 submitted or caused to be submitted false claims to the United States (Medicare and other programs)
 9 and Nevada (Medicaid) by (1) billing for hospice services provided to patients of Creekside Hospice
 10 in Las Vegas who were ineligible for hospice because they were not terminally ill (2) failing to
 11 conduct face-to-face encounters with patients prior to recertifying them as continuing to be eligible
 12 for hospice, as required by the statutes and regulations, (3) failing to have at least 5% of its employee
 13 work-hours performed by volunteers, as required by regulations, (4) upcoding physician services by
 14 billing for a more expensive service than was actually performed, (5) billing for unspecified
 15 "unallowable" services, and (6) failing to timely return overpayments received. The United States
 16 and Nevada has intervened in allegations (1), (2), and (4) in the C-T Case and declined to intervene
 17 as to all other allegations.

18 In the second-filed case, No. 2:13-cv-1283 (the Lepera Case), the relator's complaint, filed
 19 on May 16, 2013, alleges that Skilled Healthcare, LLC (SKH); Creekside Home Care II, LLC¹; and
 20 Creekside Hospice II, LLC (Creekside, referred to above), submitted or caused to be submitted false
 21 claims to the United States by (1) billing for hospice services provided to patients of Creekside
 22 Hospice in Las Vegas who were ineligible for hospice because they were not terminally ill, and (2)
 23 inducing the submission of false claims related to the solicitation or payment of kickbacks to or from
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1 This entity was apparently named in error, since it provides only home care services and not hospice services.

sources of patient referrals. The United States has intervened only as to allegation (1) in the Lepera
1 Case and declined to intervene as to all other allegations.
2

3 The discussion above demonstrates that there is a substantial overlap in the allegations of the
4 complaints in these two actions. Both allege false claims were submitted for patients of Creekside
5 Hospice, based on a variety of related types of falsity. The legal basis for the claims in both suits is
6 the civil False Claims Act and the Nevada False Claims Act, which is substantially similar to the
7 federal enactment in its substantive provisions. Substantially all of the same witnesses and evidence
8 will be necessary to resolve the claims as to which the United States and Nevada are intervening in
9 the two cases. As a result, the Court and the parties will realize significant economies in the
10 litigation of these two matters if they are consolidated into a single lawsuit. The relators and the
11 defendants will also benefit by the consolidation for the same reasons, and they will not experience
12 any additional burden or cost as a result of the consolidation.
13

14 The United States and Nevada request that the Court consolidate these matters before Judge
15 McKibben, because the C-T Case pending before Judge McKibben is the older of the two cases,
16 having been originally filed over one year prior to the Lepera Case.
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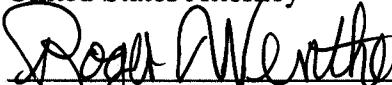
1 II. CONCLUSION

2 The United States and Nevada therefore request that the Court consolidate these two cases
3 and assign the consolidated case to Judge Howard McKibben.

4 Dated: August 7, 2014

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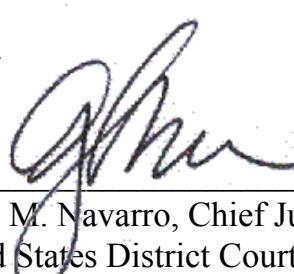
17 
18 DONNA R. ROHWER
19 Senior Deputy Attorney General

20 ORDER

21 **IT IS HEREBY ORDERED** that the Motion to Consolidate Cases (ECF No. 20) is
22 GRANTED.

23 **IT IS FURTHER ORDERED** that civil cases 2:13-cv-01283-GMN-PAL and 2:13-
24 cv-00167-HDM are hereby consolidated. **Case No. 2:13-cv-00167-HDM** shall hereafter serve
25 as the base case.

26 **DATED** this 14th day of August, 2014.
27

28 
29 Gloria M. Navarro, Chief Judge
30 United States District Court